88-1907

Supreme Court, U.S.
FILED
MAY 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1988

ELIJAH WHITE RATCLIFF,
APPELLANT
VS
UNITED STATES OF AMERICA,
APPELLEE

ON APPEAL FROM THE UNITED
STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX TO JURISDICTIONAL
STATEMENT

APPELLANT, PRO SE

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INDEX TO APPENDIX

REFERENCE	PAGE
Order Affirming Judgments of District Courts	2
Opinion of Court Below	3
Order Denying Petition for Rehearing	11
Sentencing Court Order Denying Motion for Review	13
Collateral Court Order Denying Motion for Review	14
Notice of Appeal	16
Abbreviations Pertinent to Statement	20

NO. 88-1758/88-2018

ELIJAH WHITE RATCLIFF, PETITIONER
versus
RICHARD THORNBURGH Attorney General of the United States, et al. APPELLEES

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CURCUIT

(Filed Jan 31 1989)

Appeal from the United States District Court for the Western District of Texas Before Reavley, Politz, and Jones, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, it is now ordered and adjudged by this Court that the Judgment of the District Court is affirmed.

January 31, 1989

ELIJAH WHITE RATCLIFF, PETITIONER-APPELLANT
versus
RICHARD THORNBURGH, Attorney General of the United States, et al.,

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(Filed Jan 31 1989)

PER CURIAM:

At issue in these consolidated appeals are the denial of Ratcliff's motion to correct illegal judgment pursuant to 28 U.S.C. (2255 and Federal Rule of Criminal Procedure 35, by the Southern District of Texas, and the dismissal of a similar pleading filed in the Western District of Texas. We affirm. We further caution Ratcliff

that his propensity for filing a myriad of baseless pleadings has not gone unnoticed and that should he continue to do so in the future, this Court will surely issue sanctions, and the district court should strongly consider doing the same thing.

A. The Southern District Proceedings

In December, 1987, Ratcliff's probation was revoked and he was ordered to serve 18 months, to pay a $75.00 special assessment and costs. At about the time this motion was underway, Ratcliff filed motions to correct illegal judgment pursuant to 28 U.S.C. (2255 and Federal Rule Criminal Procedure 35. These motions allege:

1. The trial court abused its

discretion in refusing his request for records of the IRS substantiating that he owed back taxes;

2. He was denied a right of compulsory process under the Sixth Amendment by the trial court's refusal to enforce a subpoena duces tecum against IRS;

3. The trial court abused its discretion by permitting the government to present hearsay testimony that a "proceeding" was under way regarding his back tax liability; and

4. The district court erred in permitting the government to present evidence of fire arms owned by his father.

The district court denied this motion insofar as it pertained to Rule 35, and it dismissed the habeas corpus contention pursuant to Rule 4(b) of the supplemental rules governing such procedings.

Ratcliff initially riled a brief in this Court raising three issues. His original brief alleged that he was improperly ordered to undergo psychiatric examination, that his speedy trial right was violated,

and the district court erroneously refused to take notice of his pro se motions during the original prosecution. These issues, none of which was raised in the pertinent proceedings in the trial court, need not be considered for that reason alone. McNeil v Blackburn, 802 F.2d 830. 832 (5th Cir. 1986). The latter two issues were resolved against Ratcliff in his direct appeal from conviction and may not therefore be litigated in a habeas corpus proceeding. United States v Ratcliff, 806 F.2d 1253 (5th Cir. 1986), cert. denied, 107 S.Ct. 1625 (1987); United States v Kalish, 780 F.2d 506, 508 (5th Cir. 1986), cert. denied, 106 *s.Ct. 1977 (1987). The challenge to the psychiatric evaluation is completely frivolous, because

government requested it, Ratcliff was found competent to stand trial, and its finding simply has no effect on the the validity of his conviction or sentence.

After filing his brief, Ratcliff purported to file a "corrected" brief which would have raised ten additional issues on appeal. This Court refused to accept that brief, because it did not comply with our apropriate rules for supplementation. Moreover, as the United States observed, Ratcliff filed a motion to correct the brief after the United States had filed its initial brief, and this would have required it to re-brief the entire case.

Ratcliff also contends in the November 14 brief, which we allowed filed as a "supplemental brief", that he was entitled to a hearing

on his federal petitions. We disagree. Rule 4(b) of the supplemental rules governing (2255 proceedings authorizes a district court to order summary dismissal "if it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court." That condition was abundantly fulfilled here. Ratcliff then alleges that he was illegally sentenced pursuant to counts three and four of the indictment because they involve the same conduct. This issue was not presented to the trial court, and we make no ruling concerning it. Third, he alleges that the trial court failed to give him an entrapment instruction. This issue was not preserved in the original trial, however, because

Ratcliff claims that his trial counsel was ineffective for failing to raise entrapment. Neither the issue of ineffectiveness nor that of the entrapment instruction was previously addressed to the district court, and we will not consider them in the first instance. Finally, in a totally conclusory fashion, Ratcliff alleges that his probation was illegally revoked without any illegal or improper conduct on his part. That is a matter which he should have appealed in regard to the revocation of his probation.

B. The Western District Proceedings

In November 1988, Ratcliff requested permission to file a "supplemental brief" purportedly to include issues arising out of the consolidated appeal from El Paso.

We authorized this filing and a consolidation of the appeals, because it enables us to consolidate treatment of these meritless cases and to resolve any doubts that, to date, Ratcliff has simply raised no cognizable legal issue.

To begin with, Ratcliff's supplemental brief filed November 14 acknowledges that the proceeding he filed in the Western District of Texas is substantially identical to that filed in the Southern District of Texas. The Western District of Texas declined to rule on Ratcliff's (2255 motion because such a motion must be filed before the sentencing court. We find no fault with its action, and Ratcliff in any event waived any complaint he may have about it, because he did not include in either of his recent briefs, filed November 7 and

November 14, 1988, any reasoned argument against the Western District's action.

We strongly urge Ratcliff to think carefully before he files pleadings in the future. The judgments of the district courts are AFFIRMED.

No. 88-1758

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

ELIJAH WHITE RATCLIFF, Petitioner-Appellant

versus

RICHARD THORNBURG, Attorney General of United States, et al., Respondent-Appellees

Appeal from the United States District Court for the Western District of Texas

No. 88-2018

UNITED STATES OF AMERICA, Plaintiff-Appellee

versus

ELIJAH W. RATCLIFF, Defendant-Appellant

Appeal from the United States District Court for the Southern District of Texas

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion 01-31-89, 5 Cir., 198_, _____F.2d ____)

(March 16, 1989)

Before REAVLY, POLITZ and JONES, Circuit Judges.

PER CURIAM:

(<) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc

is also DENIED.

ENTERED FOR THE COURT:

S/Edith H. Jones 3/13/89

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA	CRIMINAL
V	HCR-85-28
Elijah W. Ratcliff	Ancillary to CIVIL
----------	ACTION CA-H-87-4014

ORDER OF DISMISSAL

The defendant has filed a motion to vacate sentence pursuant to 28 U.S.C. 2255.

The Court has carefully considered the present motion along with the record of the prior criminal pro-

ceeding and concludes that the defendant is entitled to no relief. Therefore, it is

ORDERED that the motion is summarily DISMISSED pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings in the United States District Courts.

The Clerk will send a copy of this Order to all parties.

DONE at Houston, Texas, this 22nd day of December, 1987.

s/Norman Black

United States District Judge

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

ELIJAH WHITE RATCLIFF JUDGMENT IN

V A CIVIL CASE

EDWIN MEESE, etal [sic]

(Filed Aug221988) CASE NUMBER:

EP-88-CA-108

(xx) Decision by Court. This action came to considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Magistrate's Report and Recommendation are ADOPTED. The application for writ of habeas corpus is DISMISSED.

IT IS SO ORDERED.

Date August 22, 1988 s/Charles W. Vagner, Clerk

s/ Grace Sompoell

(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

(Filed Sep19 1988)

ELIJAH WHITE RATCLIFF,

PLAINTIFF EP 88 CA 108

V.

THE UNITED STATES OF AMERICA,

DEFENDANTS

ORDER

Plaintiff's Motion for New Trial and Request for Conclusions of Fact and Law, having been duly considered is DENIED.

IT IS SO ORDERED.

Signed this 15th day of September 1988.

s/Emilio M. Garza

EMILIO M. GARZA

United States District Judge

NO. 88-1758/88-2018

ELIJAH WHITE RATCLIFF, APPELLANT

VS

THE HONORABLE

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH

(Received March 27, 1989)

RICHARD THORNBURGH, CIRCUIT
ATTORNEY GENERAL OF
THE UNITED STATES,
AND THE UNITED STATES
OF AMERICA,
APPELLEES

NOTICE OF APPEAL

TO THE HONORABLE CHARLES CLARK, CHIEF JUDGE, AND THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Appellant, Elijah White Ratcliff, gives notice, hereby, of his intention to Appeal to the Supreme Court of the United States from the per curiam Opinion of a panel of the United States Court of Appeals for the Fifth Circuit rendered on January 31, 1989, and the Order denying Appellant's Petition for Rehearing

and Suggestion for Rehearing En Banc entered on March 13, 1989, declining the relief sought by Appellant under docket No. 88-1758 as consolidated with No. 88-2018.

Dated: March 21, 1989

s/Elijah W. Ratcliff

APPELLANT, PRO SE

ELIJAH W. RATCLIFF

AFFIDAVIT OF SERVICE

Appellant, Elijah White Ratcliff, certifies under penalties of perjury that a copy of the foregoing and attached Notice of Appeal was served on Appellee herein by first class United States Mail addressed to:

Solicitor General of the

United States

U. S. Department of Justice

Tenth Street and

Constitution Avenue

Washington, D. C. 20530

and

Hon. Henry K. Oncken

United States Attorney

Southern District of Texas

P. O. Box 61129

Houston, Texas 77208,

this 21st day of March, A. D., 1989.

s/Elijah W. Ratcliff

AFFIANT

GUIDE TO ABBREVIATIONS PERTINENT TO STATEMENT

ABBREVIATION	REFERENCE
Ap.	Record Excerpts in Lieu of Appendix (Fifth Circuit Rule)
D	Defendant's Exhibit
Doc. No.	Docket Item Number from the District Court
l.	Line or lines of page
P	Plaintiff's Exhibit
p	Page
pp	Pages

SD TX----------United States
District Court for the
Southern District of
Texas

Tr.----------Transcript from
Trial Court

USCA----------United States Court
of Appeals

V.----------Volume of Trial
Court Transcript

WD TX----------United States
District Court for the
Western District of
Texas